

SECTION 1. Title.

This measure shall be known as the “Fairness for Injured Patients Act to Adjust California’s Maximum Compensation Cap of \$250,000 Set by Politicians in 1975 on Wrongful Death and Quality of Life Damages That Has Never Been Updated.”

SECTION 2. Findings and Declarations.

The people of California find and declare the following:

1. The right to a jury trial when a person is injured or killed as a result of negligence is a fundamental and guaranteed constitutional civil right. Jurors should be trusted with the decision-making power, and not lobbyists or politicians imposing a one-size-fits-all limit on the decisions of a jury. Nonetheless, after influence by lobbyists in 1975, California politicians passed a law that infringed upon this right.
2. In 1975, the same year the Vietnam war ended, California politicians took away the right of patients injured by medical negligence and survivors of wrongful death victims to have juries decide the amount of damages. In 1975, California politicians set a maximum compensation cap of \$250,000 on the value of quality of life damages for patients who are injured or maimed and on the total recovery allowable to an entire family whose loved one is killed because of medical negligence. As a result, since 1975, the maximum compensation any patient-victim is entitled to for disfigurement, permanent damage to quality of life, physical impairment, disability, pain, loss of a limb, blindness, and other quality of life damages is \$250,000. Brain damaged babies and children with spastic quadriplegia and cerebral palsy caused by medical negligence are limited to \$250,000 as maximum quality of life compensation by this 1975 legislative cap despite the fact that they will never be able to walk, talk, eat, or live any facet of a normal human life.
3. The maximum \$250,000 legislative cap has not been adjusted since it was set in 1975 – 45 years ago. In today’s dollars, the \$250,000 cap is worth 80 percent less than it was in 1975. The \$250,000 cap is worth only \$50,768 in 1975 dollars.
4. The \$250,000 legislative cap limits the value of patients’ lives, as well as the loss of quality of life, for all victims of medical negligence no matter how egregious the negligence is or how serious the injuries are.
5. The current 1975 law unfairly discriminates against women and their survivors because women do not receive equal pay and also do not receive fair compensation for losses that specifically affect women, like loss of fertility, failure to diagnose breast and cervical cancer, and injuries to women during childbirth.
6. This severe restriction on patients’ and survivors’ legal rights to hold medical providers accountable was accompanied by a promise that a strong regulatory system would be created to protect patients from harm. That never happened. Patient safety scandals over the last 45 years have demonstrated that the health care system has been unable to police itself. As a result, there are no consequences in many cases of negligence, resulting in a decline in patient safety and quality of care.

7. The cost of caring for undeterred medical negligence has and will add significant costs, which are borne by California taxpayers and health care insurance providers rather than wrongdoers.

8. Allowing continued introduction of evidence of an injured person's collateral sources of support as an affirmative defense results in responsibility for economic damages being shifted to, and borne by, our health care system and taxpayers.

9. Continuing to force innocent patients and survivors to wait decades to receive compensation through periodic payments unfairly burdens them and the taxpayers and health insurers who pay for their care while they wait.

10. Courts in other states have invalidated caps such as the one the California Legislature imposed in 1975 based on the fundamental right to a jury trial.

11. More than half of the states in America, including New York, New Jersey, Illinois, Washington, and Pennsylvania, do not have caps on compensation like California's limiting juries' verdicts in medical negligence cases.

12. California juries are not told about the 1975 legislative cap or made aware that the damages they award a patient will be arbitrarily reduced to \$250,000 notwithstanding the severity of the medical negligence or of the harm caused to the patient or survivors.

13. Health care providers should not be subject to meritless lawsuits. Certificates of merit should be filed to establish the merits of any case filed against a health care provider based on negligence. To obtain this result, patients and survivors should have more time to file their cases. This should also save judicial resources and taxpayer dollars by reducing the number of cases filed to meet a shortened deadline.

14. The federal protection from medical negligence lawsuits afforded to federally funded community clinics by the Federal Tort Claims Act should be maintained.

SECTION 3. Intent.

1. The maximum \$250,000 compensation cap set by politicians in 1975 for quality of life damages for patients injured by medical negligence should be adjusted for inflation.

2. Juries should be informed of the compensation cap.

3. Judges and juries, not politicians, should have the discretion to decide whether the cap applies in cases of medical negligence that causes catastrophic injuries or death.

4. Judges, not politicians, should have the discretion to determine that the fees paid to an attorney are reasonable and not excessive in cases of medical negligence resulting in catastrophic injury or death, and attorney's fees originally capped in 1975 and adjusted in 1987 should be updated for inflation.

5. The collateral source rules that apply in other civil cases should also apply in medical negligence actions and periodic payments for medical negligence verdicts and judgments should be disallowed.

6. Preserving patient rights in California should be balanced with safeguards and deterrence against meritless lawsuits. Attorneys who file medical negligence lawsuits should be required to file a certificate of merit and attorneys who file meritless lawsuits alleging medical negligence should pay the doctors' attorney's fees and costs. This, along with extending the time patients have to file as in other cases, will provide sufficient time to obtain a certificate of merit and will deter and reduce the number of meritless lawsuits.

SECTION 4. Section 3333.2 of the Civil Code is amended to read:

3333.2. (a) In any action for injury against a health care provider based on professional negligence, the injured plaintiff shall be entitled to quality of life or survivor damages. ~~recover noneconomic losses to compensate for pain, suffering, inconvenience, physical impairment, disfigurement and other nonpecuniary damage.~~

(b) Except as provided in subdivision (d), in no action shall the amount of quality of life or survivor damages ~~for noneconomic losses~~ exceed two hundred fifty thousand dollars (\$250,000), as adjusted pursuant to subdivision (c).

(c) On January 1 of the first calendar year following the effective date of this Act, the cap on the amount of damages specified in subdivision (b) shall be adjusted to reflect any increase in inflation since the cap was established in 1975 as measured by the Consumer Price Index published by the United States Bureau of Labor Statistics. Annually thereafter, the cap on the amount of damages specified in this subdivision shall be adjusted to reflect any increase in inflation as measured by the Consumer Price Index published by the United States Bureau of Labor Statistics in the prior year. The Department of Finance shall calculate and publish on its internet website the adjustments required by this subdivision.

(d) Notwithstanding subdivision (b) or any other provision of law, judges and juries may award damages in excess of the cap set forth in subdivision (b) upon a finding of catastrophic injury.

(e) In all actions for injury against a health care provider based on professional negligence, a jury shall: (1) be advised of the amount of the cap as adjusted pursuant to subdivision (c) and its right to award damages in excess of the adjusted cap upon a finding of catastrophic injury pursuant to subdivision (d); and (2) hear evidence regarding quality of life or survivor damages.

(f) In any action for injury against a health care provider based on professional negligence and involving catastrophic injury, a court shall award reasonable attorney's fees to the prevailing plaintiff, notwithstanding Section 6146 of the Business and Professions Code, and in making such award shall consider the results obtained, the risk undertaken by the attorney, the costs expended by the attorney, any agreement between the attorney and the client, the complexity of the action, and the skill demonstrated by the attorney, provided the court makes a finding that the fees are fair, reasonable, and not excessive based on the record of the case.

(g) Money judgments awarded in an action for injury against a health care provider based on professional negligence shall be satisfied as provided in Sections 680.010 through 724.260 of the Code of Civil Procedure and Sections 965 through 985 of the Government Code. Nothing in this section shall abridge the right to appeal.

(h)(1) In every action for injury against a health care provider based on professional negligence where the plaintiff is represented by counsel, within 60 days of the date of service of the initial complaint on any defendant or cross-defendant, the attorney for the plaintiff shall file and serve a certificate executed by the attorney for the plaintiff declaring:

(A) That the attorney has reviewed the facts of the case, that the attorney has consulted with and received an opinion from at least one health care provider in the same discipline as the defendant and whom the attorney reasonably believes is knowledgeable in the relevant issues involved in the particular action, and that the attorney has concluded on the basis of this review and consultation that there is a reasonable basis for the commencement of such action;
or

(B) That the attorney was unable to obtain the consultation required by subparagraph (A) because the attorney had made three separate good faith attempts with three separate health care providers to obtain this consultation and none of those contacted would agree to the consultation.

(2) The failure to comply with this subdivision shall be grounds for a demurrer pursuant to Section 430.10 of the Code of Civil Procedure or a motion to strike pursuant to Section 435 of the Code of Civil Procedure.

(i) In the event that that the court determines that an action for injury against a health care provider based on professional negligence is meritless, it shall order the plaintiff's attorney to pay the reasonable expenses, including attorney's fees, incurred by the defendant as a result of such an action.

(e) (j) For the purposes of this section:

(1) "Catastrophic injury" means death, permanent physical impairment, permanent disfigurement, permanent disability, or permanent loss of consortium;

(+ (2) "Health care provider" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code; and any clinic, health dispensary, or health facility, licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. "Health care provider" includes the legal representatives of a health care provider;

(3) "Health care provider in the same discipline" as referenced in subdivision (h) of this section means a health care provider whom the filing attorney believes in good faith has the knowledge, skill, experience, training, or education that is of a type that reasonably may be

relied upon in forming an opinion upon the subject matter to which the case relates as presented by the facts of the case as known at the outset of litigation. For purposes of subdivision (h) of this section, a health care provider may hold a license or certification as specified in paragraph (2) of subdivision (j) of this section, or a similar license or certification issued in another state or jurisdiction;

(4) “Meritless” means wholly without merit or for the sole purpose of harassing an opposing party. An action for injury against a health care provider based on professional negligence shall not be deemed meritless if an attorney has filed a certificate of merit pursuant to subdivision (h) of this section;

(2) (5) “Professional negligence” means a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that such services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital;

(6) “Quality of life damages” means compensation to patient-victims of medical negligence for physical impairment, disability, disfigurement, physical pain, mental suffering, inconvenience, emotional distress, grief, anxiety, humiliation, or decrease in the patient-victim’s life expectancy, and loss of consortium suffered by a loved one of the patient-victim of medical negligence;

(7) “Survivor damages” means the loss of love, companionship, comfort, care, fellowship, assistance, protection, affection, society, moral support, and the enjoyment of sexual relations, suffered by a loved one of a patient-victim who died as a result of professional negligence.

SECTION 5. Section 3333.1 of the Civil Code is repealed.

~~(a) In the event the defendant so elects, in an action for personal injury against a health care provider based upon professional negligence, he may introduce evidence of any amount payable as a benefit to the plaintiff as a result of the personal injury pursuant to the United States Social Security Act, any state or federal income disability or worker’s compensation act, any health, sickness or income disability insurance, accident insurance that provides health benefits or income disability coverage, and any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or other health care services. Where the defendant elects to introduce such evidence, the plaintiff may introduce evidence of any amount which the plaintiff has paid or contributed to secure his right to any insurance benefits concerning which the defendant has introduced evidence.~~

~~(b) No source of collateral benefits introduced pursuant to subdivision (a) shall recover any amount against the plaintiff nor shall it be subrogated to the rights of the plaintiff against a defendant.~~

~~(c) For the purposes of this section:~~

(1) "Health care provider" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code; and any clinic, health dispensary, or health facility, licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. "Health care provider" includes the legal representatives of a health care provider;

(2) "Professional negligence" means a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that such services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital.

SECTION 6. Section 667.7 of the Code of Civil Procedure is repealed.

667.7. (a) In any action for injury or damages against a provider of health care services, a superior court shall, at the request of either party, enter a judgment ordering that money damages or its equivalent for future damages of the judgment creditor be paid in whole or in part by periodic payments rather than by a lump sum payment if the award equals or exceeds fifty thousand dollars (\$50,000) in future damages. In entering a judgment ordering the payment of future damages by periodic payments, the court shall make a specific finding as to the dollar amount of periodic payments which will compensate the judgment creditor for such future damages. As a condition to authorizing periodic payments of future damages, the court shall require the judgment debtor who is not adequately insured to post security adequate to assure full payment of such damages awarded by the judgment. Upon termination of periodic payments of future damages, the court shall order the return of this security, or so much as remains, to the judgment debtor.

(b)(1) The judgment ordering the payment of future damages by periodic payments shall specify the recipient or recipients of the payments, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made. Such payments shall only be subject to modification in the event of the death of the judgment creditor.

(2) In the event that the court finds that the judgment debtor has exhibited a continuing pattern of failing to make the payments, as specified in paragraph (1), the court shall find the judgment debtor in contempt of court and, in addition to the required periodic payments, shall order the judgment debtor to pay the judgment creditor all damages caused by the failure to make such periodic payments, including court costs and attorney's fees.

(c) However, money damages awarded for loss of future earnings shall not be reduced or payments terminated by reason of the death of the judgment creditor, but shall be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately prior to his death. In such cases the court which rendered the original judgment, may, upon petition of any party in interest, modify the judgment to award and apportion the unpaid future damages in accordance with this subdivision.

~~(d) Following the occurrence or expiration of all obligations specified in the periodic payment judgment, any obligation of the judgment debtor to make further payments shall cease and any security given, pursuant to subdivision (a) shall revert to the judgment debtor.~~

~~(e) As used in this section:~~

~~(1) "Future damages" includes damages for future medical treatment, care or custody, loss of future earnings, loss of bodily function, or future pain and suffering of the judgment creditor.~~

~~(2) "Periodic payments" means the payment of money or delivery of other property to the judgment creditor at regular intervals.~~

~~(3) "Health care provider" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code; and any clinic, health dispensary, or health facility, licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. "Health care provider" includes the legal representatives of a health care provider.~~

~~(4) "Professional negligence" means a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that such services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital.~~

~~(f) It is the intent of the Legislature in enacting this section to authorize the entry of judgments in malpractice actions against health care providers which provide for the payment of future damages through periodic payments rather than lump sum payments. By authorizing periodic payment judgments, it is the further intent of the Legislature that the courts will utilize such judgments to provide compensation sufficient to meet the needs of an injured plaintiff and those persons who are dependent on the plaintiff for whatever period is necessary while eliminating the potential windfall from a lump sum recovery which was intended to provide for the care of an injured plaintiff over an extended period who then dies shortly after the judgment is paid, leaving the balance of the judgment award to persons and purposes for which it was not intended. It is also the intent of the Legislature that all elements of the periodic payment program be specified with certainty in the judgment ordering such payments and that the judgment not be subject to modification at some future time which might alter the specifications of the original judgment.~~

SECTION 7. Section 6146 of the Business and Professions Code is amended to read:

6146. (a) *Except as provided for in subdivision (c),* ~~An~~ *an* attorney shall not contract for or collect a contingency fee for representing any person seeking damages *that are subject to Section 3333.2 of the Civil Code* in connection with an action for injury or damage against a health care provider based upon such person's alleged professional negligence in excess of the following limits, *as adjusted pursuant to subdivision (b):*

(1) Forty percent of the first fifty thousand dollars (\$50,000) recovered.

- (2) Thirty-three and one-third percent of the next fifty thousand dollars (\$50,000) recovered.
- (3) Twenty-five percent of the next five hundred thousand dollars (\$500,000) recovered.
- (4) Fifteen percent of any amount on which the recovery exceeds six hundred thousand dollars (\$600,000).

The limitations shall apply regardless of whether the recovery is by settlement, arbitration, or judgment, or whether the person for whom the recovery is made is a responsible adult, an infant, or a person of unsound mind.

(b) On January 1 of the first calendar year following the effective date of this Act, the monetary thresholds specified in subdivision (a) shall be adjusted to reflect any increase in inflation since those thresholds were adjusted in 1987 as measured by the Consumer Price Index published by the United States Bureau of Labor Statistics. Annually thereafter, the monetary thresholds specified in this subdivision shall be adjusted to reflect any increase in inflation as measured by the Consumer Price Index published by the United States Bureau of Labor Statistics in the prior year. The Department of Finance shall calculate and publish on its internet website the adjustments required by this subdivision.

If periodic payments are awarded to the plaintiff pursuant to Section 667.7 of the Code of Civil Procedure, the court shall place a total value on these payments based upon the projected life expectancy of the plaintiff and include this amount in computing the total award from which attorney's fees are calculated under this section.

(c) Notwithstanding subdivision (a), in any action for injury against a health care provider based on professional negligence and involving catastrophic injury, a person shall have the right to contract with an attorney for a reasonable contingency fee in excess of the limits set in subdivision (a), as adjusted pursuant to subdivision (b), and an attorney may enter into such an agreement, and any such agreement shall be considered by the court in awarding reasonable attorney's fees pursuant to subdivision (f) of Section 3333.2 of the Civil Code.

~~(e)~~**(d)** For purposes of this section:

(1) "Recovered" means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim. Costs of medical care incurred by the plaintiff and the attorney's office-overhead costs or charges are not deductible disbursements or costs for such purpose.

(2) "Health care provider" means any person licensed or certified pursuant to Division 2 (commencing with Section 500), or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code; and any clinic, health dispensary, or health facility, licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. "Health care provider" includes the legal representatives of a health care provider.

(3) "Professional negligence" is a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal

injury or wrongful death, provided that the services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital.

SECTION 8. Section 340.5 of the Code of Civil Procedure is amended to read:

340.5. In an action for injury or death against a health care provider based upon such person's alleged professional negligence, the time for the commencement of action shall be three years after the date of injury or ~~one year~~ two years after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first. In no event shall the time for commencement of legal action exceed three years unless tolled for any of the following: (1) upon proof of fraud, (2) intentional concealment, or (3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person. Actions by a minor shall be commenced within ~~three~~ four years from the date of the alleged wrongful act except that actions by a minor under the full age of six years shall be commenced within ~~three~~ four years or prior to his eighth birthday whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which parent or guardian and defendant's insurer or health care provider have committed fraud or collusion in the failure to bring an action on behalf of the injured minor for professional negligence.

For the purposes of this section:

(1) "Health care provider" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code; and any clinic, health dispensary, or health facility, licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. "Health care provider" includes the legal representatives of a health care provider;

(2) "Professional negligence" means a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that such services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital.

SECTION 9. Effective Date.

The provisions of this Act shall apply in any action that has not been resolved by way of a final settlement, judgment, or arbitration award as of the effective date of this Act, provided that subdivision (h) of Section 3333.2 shall apply prospectively to cases filed 90 days or more after the Act takes effect.

SECTION 10. Severability.

If any provision of this Act, or part of this Act, or the application of any provision or part to any person or circumstances, is for any reason held to be invalid, the remaining provisions, or applications of provisions, shall not be affected, but shall remain in full force and effect, and to

this end the provisions of this Act are severable. It is the intent of the voters that this Act would have been enacted regardless of whether any invalid provision had been included or any invalid application had been made.

SECTION 11. Conflicting Initiatives.

(a) In the event that this measure and another measure addressing the rights of individuals injured by medical negligence shall appear on the same statewide ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes than a measure deemed to be in conflict with it, the provisions of this measure shall prevail in their entirety, and the other measure or measures shall be null and void.

(b) If this measure is approved by the voters but superseded by law by any other conflicting measure approved by voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force and effect.

SECTION 12. Savings Clause.

This Act is intended to supplement federal and state law, where permissible, but shall not apply where such application is preempted by, or in conflict with, federal law, or the California Constitution.

SECTION 13. Amendment.

The provisions of this Act may be amended after its approval by the voters by a statute that is passed by a vote of two-thirds of the members of each house of the Legislature and signed by the Governor, provided that such amendments are consistent with and further the intent of this Act.

(00391043-2)